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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS,  
SAN ANTONIO DIVISION**

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Richard Brewer, et al.,	§	
<i>Plaintiffs,</i>	§	
v.	§	Civil Action No. 5:17-cv-00837-DAE
	§	
Ron Nirenberg, et al.	§	
<i>Defendants.</i>	§	

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**PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTION  
TO RECONSIDER COURT'S LEAVE  
TO FILE AMENDED COMPLAINT**

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**I. PARTIES**

1. Plaintiffs are Richard Brewer and the Texas Division, Sons of Confederate Veterans, Inc.

2. Defendants are Ron Nirenberg, Roberto Trevino, William Shaw, Rebecca Viagran, Rey Saldana, Shirley Gonzales, Greg Brockhouse, Ana Sandoval, Manny Pelaez, John Courage, Clayton Perry, and the City of San Antonio.

**II. ARGUMENT**

3. Plaintiffs oppose defendants' motion to reconsider the Court's leave to file an amended complaint on the following grounds.

A. DEFENDANTS DID NOT ALLOW REASONABLE TIME TO CONFER  
WITH PLAINTIFFS ON THE MOTION TO RECONSIDER,  
AND THE MOTION SHOULD, THEREFORE, BE DENIED.

4. The local rules of the Federal District Court for the Western District of Texas require that parties confer on nondispositive motions. CV-7(i). When the movant does not confer with the opposition, the Court “may refuse to hear or may deny a dispositive motion[,] unless the movant advises the court within the body of the of the motion that counsel for the parties have first conferred in a good-faith attempt to resolve the matter by agreement.” . . . *Id.*

5. Defendants did not allow plaintiffs adequate time to confer before filing their motions. Defendants e-mailed plaintiffs’ counsel at 2:40 p.m., Monday, June 25, 2018, to confer about the motion to reconsider. Exhibit A. Defendants filed their motion at 10:18 p.m. later the same day. (ECF No. 45). Plaintiffs’ counsel did not see defendants’ e-mail until approximately 9 p.m. that evening and did not open it until the next morning. Plaintiffs have consistently given defendants at least twenty-four business hours to confer. Plaintiffs are unaware of any need of defendants that required them to file their motion to reconsider without first conferring with plaintiffs.

6. As defendants did not allow a reasonable amount of time for conference with plaintiffs, the Court should deny the motion to reconsider.

B. DEFENDANTS HAD AMPLE OPPORTUNITY TO OPPOSE THE  
AMENDED COMPLAINT PRIOR TO FILING BUT DID NOT, WAIVING  
ANY RIGHT TO RELIEF SUBSEQUENT TO FILING.

7. Defendants opposed plaintiffs' motion for leave to file amended complaint via an e-mail on June 11, 2018. The motion and amended complaint were filed later that day. (ECF No. 43). The Court granted plaintiffs' motion and the amended complaint was filed on June 22, 2018. (ECR No. 44). Defendants had close to two weeks to file an opposition to the amended complaint and did not. Defendants make no claim that they had planned to file an objection in their motion to reconsider and were prevented from doing so through events outside their control. (ECF No. 45). Defendants missed their ample opportunity to contest plaintiffs' amended complaint before the Court's admission of the amended complaint and should now be deemed to have waived objection.

C. DEFENDANTS ARE NOT PREJUDICED  
BY THE AMENDED COMPLAINT.

8. The Court has not set a date for trial in this matter. Defendants have ample time to prepare their defenses to all of plaintiffs' claims. Plaintiffs would agree to defendants' reasonable requests for expansions of time to prepare their case, if any were to be needed.

D. EQUITY REQUIRES THAT THE COURT ALLOW  
ALL REASONABLE CLAIMS AND DEFENSES BE PRESENTED.

9. The principles of equity demand that when the state is entrusted with the corpus of a perpetual, public charitable gift that the terms

of the gift be enforceable by the citizens the gift was intended to benefit. Defendants' actions shock the conscience and require the equitable and legal powers of the Court to remedy. As Justice Robert Jackson explained, "The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of the government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error." *American Communications Assoc., v. Douds*, 339 U.S. 382, 442-43. Here, we have citizens aligned against a powerful local government seeking to prevent their government from falling into totalitarian error. Equity cries out these claims be brought before the bar to vindicate the rights of the citizens of San Antonio and of Texas, but also the primacy of our Constitution over totalitarian drift acts of the state.

### III. PRAYER

10. For these reasons, plaintiffs ask that the Court deny Defendants' Motion to Reconsider Court's Leave to File Amended Complaint.

Respectfully submitted this 29th day of June 2018.

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### **CERTIFICATE OF SERVICE**

I certify that on June 29, 2018, a copy of Plaintiffs' Objection to Defendants' Motion to Reconsider Court's Leave to File Amended Complaint was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the attorney in charge for defendants, Ron Nirenberg, et al.

s/ David D. Vandenberg